IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 5 of 1994

with

CRIMINAL APPEAL No 6 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ

Versus

DAHYABHAI SOMABHAI CHAUHAN & 1

Appearance:

1. Criminal Appeal No. 5 of 1994
MR BUKHARI, APP, for appellant
MR BP MUNSHI for Respondent No. 1

2. Criminal AppealNo 6 of 1994
MR BUKHARI, APP, for appellant
MR BP MUNSHI for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 04/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

1s. The State of Gujarat has preferred these two appeals being aggrieved by the judgment and order rendered by the learned Additional Sessions Judge, Panchmahals, at Godhra, on 6.8.1993 in Sessions Case No.131 of 1992.

2. The respondents in both these appeals were the accused persons who were charged for offences punishable under Section 302 read with Section 34 and Section 504 of Indian Penal Code. The learned Trial Judge, after considering the evidence on record, acquitted all the accused persons of offence punishable under Section 302 read with Section 34 of I.P.C. Aggrieved by the said judgment, the State has preferred appeal against the acquittal which is registered as Criminal Appeal No.6 of 1994.

3. The learned Trial Judge, after considering the evidence on record, convicted accused-Dahyabhai Somabhai Chauhan and Mangalbhai Somabhai Chauhan (original accused Nos.2 and 3 in Sessions Case No.131 of 1992) for offence punishable under Section 304(2) of I.P.C. and ordered them to undergo rigorous imprisonment for a period of three years with a fine of Rs.500/-. The Trial Court also ordered that, in event of default in payment of fine, the accused persons shall undergo one month's rigorous imprisonment in addition. The State has preferred Criminal Appeal No.5 of 1994 with a grievance that the sentence imposed by the learned Trial Judge is inadequate and not proportionate with the offence for which the the respondents are convicted.

4. None of the accused persons have preferred any appeal against conviction.

5. The facts of the case, in a nutshell, can be narrated thus:-

5.1 On the 1st March, 1992, one Shanabhai Manibhai Chauhan of Karana Muvada, taluka Kalol, district Panchmahals lodged a First Information Report with Kalol Police Station stating that on the 29th February, 1992,

the complainant himself, his sister-Kokila and mother-Manguben were at home around 4.00 in the afternoon. The house of Manguben and the house of Somabhai have an open courtyard between which there is a cactus hedge. Along the hedge, there were some green beans plants wherefrom the complainant's mother had plucked some green beans. The complainat's aunt-Soniben had a quarrel with the complainant's mother on this count. But the quarrel stopped gradually. At about 9.00 P.M. that night, the complainant's uncle-Somabhai came home and started quarrel with the complainant's mother and used abusive language. The complainant's cousin-Mangalbhai Somabhai also came and gave abuses. The complainant's father-Manibhai asked them not to use abusive language. At at that time, Somabhai and his sons, Mangalbhai and Dahyabhai, rushed with sticks and "Vansi" and Mangalbhai and Dahyabhai inflicted stick blows on head of Manibhai. Uncle-Somabhai was instigating them. At that time, the complainant, his mother and his brother-Laxman intervened to rescue the complainant's father. In this transaction, Somabhai gave a "Vasi" blow on leg of Laxman. The assailants, thereafter, went away. In this incident, father of the complainant sustained injuries in the stomach and head, as a result of which he became unconscious and fell on the floor in the courtyard. He was required to be carried in the house. Thereafter, Dr. Hemant Pandya of Sansoli was immediately called by Pratapbhai and Arvindbhai. Doctor examined the father of the complainant and declared him dead. The complainant along with Pratab Magan went to the Sarpanch to inform him about the incident. The Sarpanch was at his home and the F.I.R. was not lodged as it was late night. The complainant, therefore, went next morning for lodging the F.I.R.

6. On basis of the F.I.R., offence was registered and investigation made. After investigation, the Police found sufficient evidence against the accused persons and, therefore, filed a charge sheet in the Court of learned Judicial Magistrate, First Class, Kalol. The learned Judicial Magistrate, First Class, Kalol, committed the case to the Court of Sessions since the charges levelled against the accused persons were triable exclusively by a Court of Sessions. The Sessions Court, thereupon, registered the case as Sessions Case No.131 of 1992, which came to be disposed of by the impugned judgment and order dated 6.8.1993, passed by the learned Additional Sessions Judge, Panchmahals, at Godhra. It is this order that is the subject matter of challenge in these appeals preferred by the State of Gujarat.

7. Heard learned Additional Public Prosecutor Mr. Bukhari and Mr. Munshi, learned advocate for the respondents.

8. Mr. Bukhari has taken us through the record and proceedings as well as the judgment of the Trial Court.

8.1 Mr. Bukhari's main contention is that, if the sequence of incident is seen, it is clear that all the three accused persons went to the place of incident armed with deadly weapon. There is active participation of all the three accused persons. The incident has, ultimately, resulted into death of Manibhai, father of the complainant and, therefore, the Trial Court has erred in holding that there was no common intention. Mr. Bukhari for the same set of reasons submitted that the Trial Court has further erred in not convicting the accused persons for offence of murder. No other inference could have been drawn as has been done by the Trial Court when the injuries were inflicted by deadly weapons on vital parts of the body. The man succumbed to injuries within hours of the injury. All these factors taken together, Mr. Bukhari submitted that, the accused persons ought to have been convicted under Section 302 read with Section 34 of I.P.C. Mr. Bukhari submitted that accused-Somabhai, who has been acquitted had not only instigated the convicted accused persons, but had also taken active part in the incident by giving "Vansi" blow on the thigh of one of the witnesses (Laxman) and, therefore, he also ought to have been convicted. He submitted that the appeals may, therefore, be allowed and the accused-respondents be convicted for offence punishable under Section 302 read with Section 34 of I.P.C. and the acquittal and the conviction under Section 304, Second Part read with Section 34 of I.P.C. may be quashed and set aside.

9. Mr. Munshi, learned advocate for the respondents, opposed this appeal. According to him, the judgment and order is passed after due consideration of facts of the case and the position of law. He submitted that no interference, at this stage, is required in this appeal. No apeal is preferred by the convict-accused persons and they have already undergone the sentence. He submitted that the conviction is of 1993. Seven years have lapsed and even on quantum of punishment, the Court may not interfere with the quantum of punishment inflicted by the Trial Court after lapse of a long freedom enjoyed by the respondents.

10. Having gone through the evidence, we find that the incident has roots in an earlier incident that had occurred in the early evening hours between the ladies of the two families. When accused-Somabhai came home, he was complained of the incident and he went to the place of incident. There were some heated exchange of words and, ultimately, it resulted into the incident. We agree with the observations made by the learned Trial Judge that the accused could not have shared a common intention to kill. The incident has taken place in a small village between persons who are all agriculturists and the weapons that are alleged to have been used are agricultural implements which are ordinarily carried by people with them. The quarrel in the earlier evening hours was also not of such a nature as would provoke a man to commit murder. Under the circumstances, we agree with the finding of the Trial Court that the accused persons could not have shared the common intention of causing murder.

11. So far as acquittal of Somabhai is concerned, the charge against the accused persons is that they committed murder of deceased-Manibhai Sukhabhai. In this regard, there is no evidence whatsoever coming on record to indicate involvement of this accused and when it is found that this accused did not share any common intention with the other accused, he could not have been convicted for any offence. If the charge (Ex.2) is seen, this accused is not charged for any injury allegedly caused by him to Laxman. Under the circumstances, we do not find any error in the conclusion arrived at by the Trial Court acquitting the accused. Mr. Bukhari also could not indicate anything which would call for any interference by this Court in this acquittal appeal. Acquittal appeal No.6 of 1994, therefore, must fail.

12. So far as Appeal No.5 of 1994 is concerned, the only grievance is that the quantum of sentence imposed by the Trial Court is not adequate and commensurate with the nature of offence for which the respondents have been convicted. In the instant case, the record and proceedings indicate that the accused/convicts are coming from poor families. They are basically agriculturists and it is also indicated that they were all young when the incident occurred. We find that the incident was not a premeditated one and, under the circumstances, even if the Trial Court has inflicted a relatively lesser punishment, in our opinion, it would not be proper for this Court to interfere with the quantum of punishment which is a discretionary order, at this stage, after a lapse of about seven years from the date of conviction.

We do not propose to say that in all such cases, this would be an appropriate punishment. We, therefore, feel that the State has not been able to make out a good case for interference in Criminal Appeal No.5 of 1994 as well. This appeal, therefore, also must fail.

13. Both Criminal Appeal No.5 and 6 of 1994 are dismissed.

[MS. R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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